

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Helena Headquarters
1420 East Sixth Ave.
Helena, MT 59620
November 14, 2002

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; Darlyne Dascher; John Lane and Mike Murphy.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; and other Department personnel.

Guests: Robin Cunningham, FOAM; Emil & Doris Nygard, Great Falls; Hal Harper; Bob Raney, MSPF; George Ochenski, MSPF; John Wilson, Montana TU; Garry Stocker; Allen Schallenberger, Lewis & Clark TU; Steve Pilcher, MT Stockgrowers; Larry Copenhaver, MWF; Jean Johnson, MOGA; Mary Ellen Schnur, MOGA; Don Nickman, PPSA; Ray Tribelhorn; Cynthia Tribelhorn; Rep. Debby Barrett, HD34; Bob Flynn, BBHOGA; Rep. Diane Rice, HD 33; Rep. Rick Ripley, HD50; Scott Reynolds, George Grant TU; Steve Luebeck, Big Hole Watershed Committee; Carol Fox, NRDP; Chris Beebe, MWF; Bob Lovegrove.

Guests Present But Not Signed In: Rep. Christene Kaufman

Topics of Discussion:

1. Opening – Pledge of Allegiance
2. Approval of Commission Minutes, October 3, 2002
3. Approval of Commission Conference Call Minutes, October 16, 2002
4. Approval of Commission Expenses Through October 31, 2002
5. 2003 Commission Calendar
6. 20 Year Service Award – Debbie Cheek
7. Governor's Award for Safety
8. Proposed Parks & FAS Fee Rule – Final
9. ROD on the SW Montana Grizzly Bear Management EIS – Final
10. Beckman Estate Donation of Green Property R4 - Final
11. Update on Wolf EIS – Information
12. Update on Sage Grouse – Information
13. Update on Elk Season Proposals – Information
14. Delete Special Regulations for Metcalf Lake – Tentative
15. Beaverhead & Big Hole Rivers Recreation Use Rule Extension – Tentative
16. Bean Lake Ice Fishing Closure – Tentative
17. Stuart Mill Bay – Final
18. PEIS Game Bird Farm & Shooting Preserve Programs – Final
19. Nonresident Combination Licenses Annual Rule - Final
20. Proposed ARM Rule – Extension of Deadlines – Tentative
21. Proposed ARM Rule – Deer, Elk, Antelope & Swan Bonus Points in 2003 - Tentative
22. ALS Update – Information
23. River Recreation Advisory Council - Information
24. State Parks Futures Committee Update – Information
25. Bean Lake Water Rights, Supreme Court Decision – Information

1. Opening – Pledge of Allegiance. **Chairman Dan Walker** called the meeting to order at 8:00a.m. and led the Pledge of Allegiance.

2. Approval of Commission Minutes – October 3, 2002

***ACTION:** Commissioner Darlyne Dascher moved approval of the October 3, 2002 Commission Meeting minutes as presented. Second by Commissioner John Lane. Motion passed.*

3. Approval of Commission Conference Call Minutes – October 16, 2002

***ACTION:** Commissioner Mike Murphy moved approval of the minutes for the October 16, 2002 conference call be approved. Second by Lane. Motion passed.*

4. Approval of Commission Expenses through October 31, 2002.

***ACTION:** Murphy moved approval of the Commission expenses through October 31, 2002. Second by Lane. Motion passed.*

5. 2003 FWP Commission Calendar.

Commissioners agreed to the proposed meeting schedule for 2003. **Chairman Walker** would like to have one meeting in Billings. **Dan Vincent, Region One Supervisor**, was asked to work with **Commissioner Murphy** to develop a proposal for holding a meeting in Region One. An additional day may need to be added to some meeting.

6. 20 Year Service Award – Debbie Cheek. **Director Hagener** presented **Debbie Cheek, Field Support Supervisor for the Parks Division**, an award for 20 years of service to Fish, Wildlife & Parks. **Ms. Cheek** was commended for implementing and supervising the volunteer program for the Department.

7. Governor's Award for Safety. **Doug Denler, Personnel Manager**, accepted the award on behalf of Fish, Wildlife and Parks.

8. Proposed Parks & FAS Fee Rule – Final. **Doug Monger, Parks Division Administrator**, briefly reviewed what has taken place regarding the proposed rule over the last several months. Approximately 100 comments have been received; 26 comments in opposition to charging fees in the Thompson-Chain-of-Lakes area were received. Four comments opposed elimination of the early bird passport and 6 comments supported the proposed fee increases. There were also 26 comments on the Smith River proposals. Half of these supported the fee increase if the money were earmarked for the Smith River.

The Division proposed two changes to the tentative proposal. The current fee for camping at a fishing access site is \$5 with a fishing license and \$10 a night without the license. The tentative reads \$7 with a fishing license and \$15 without. The change recommended is \$12 without a fishing license. The \$12 is more in line with parks camping fees and with the facilities provided at fishing access sites.

The second change is the fee for disabled individuals who can only access the parks by motorized vehicle. Non-ambulatory disabled individuals entering the park alone would be charged the walk-in fee of \$1 instead of the vehicle fee.

Walker received a call from an outfitter inquiring as to why the fees are being raised so much on the Smith River and why launch fees for outfitters have not been implemented on other rivers. The outfitter said he would be willing to pay fees on other rivers. **Monger** replied there are fees on the Alberton Gorge. However, for other areas it did not seem fair to charge commercial users and not private users. A proposal for commercial use of fishing access sites is being developed.

Emil Nygard – Mr. Nygard is a small landowner on the Smith River. He does not think it is right to make money from the river and use the dollars in other areas. The intent of charging fees was to pay for maintenance of the river and the corridor. The fees should be reasonable. He asked who controlled the enhancement fee and if any of the money had been spent. **Monger** said the money was in FWP but Legislative authority was needed to spend these dollars and so far none of it had been used. **Mr. Nygard** asked why the money was being collected if it was not for enhancement of the corridor.

Hal Harper – Mr. Harper is a former legislator and served on the House Fish and Game Committee. He believes this issue is of more concern than people realize. Since all other areas of state government are being cut, FWP will be the only agency to raise fees. The general public will not realize fees have been increased until next year when they go to use the facilities and therefore will be blindsided with what is basically a tax increase. It is very probable legislation will be introduced to repeal FWP rules and from then on each proposed fee increase may be subject to legislative hearings. He suggested asking for input from the Legislature before implementing additional fees. Raising fees on Smith River outfitters may negatively impact efforts to implement regulations on other rivers. He asked the Commissioners to carefully consider whether or not to implement these fees.

Bob Raney, Montana State Parks Foundation. This group is opposed to any increase in fees. **Mr. Raney** said this proposal had been presented as a recommendation from the Parks Futures Committee but that committee has not held its final meeting. His opinion is the Department asks for fee increases for maintenance and then spends the dollars on building new facilities. **Mr. Raney** recommends downsizing areas of FWP, as other agencies have had to do. He asks the Commission not approve the proposed fees and wait to see what Legislative action may be taken. He believes the Legislature will reduce the amount of Bed Tax or Coal Tax money allocated to the Department equal to what is raised by increased fees. There has been no evidence presented to prove the fee increase is necessary.

George Ochenski, Montana State Parks Foundation. **Mr. Ochenski** believes the Parks Division has grown too big and needs to be reduced. He said past policy was for the Parks Division to concentrate on maintenance, weed control, stream bank restoration. Past policies have been ignored by the agency. There has not been a proven need for the increases. He asked Commissioners to consider that if the fees are passed, the Parks Division will continue to grow.

Mike Geary, Smith River Outfitter. **Mr. Geary** considers the fee increase as a tax on small business. The increase is double the present fees and is not reasonable. Currently outfitters pay fees to the Forest Service, which is later refunded. FWP proposes those fees be turned over to the Department instead of being refunded.

John Wilson, Montana Trout Unlimited. **Mr. Wilson** said many TU members who use the Smith River have expressed concern on the proposal. Fees collected on the Smith River should be for operation and enhancement of the river. They do not like the idea that fees collected for the Smith River are used in other parks.

Commissioner Tim Mulligan asked for a response from Parks Division personnel on the accusations and information provided. What are their perceptions on possible Legislative actions, what would be the impact if the fees were not implemented, is there anything in statute on fee increases.

Monger said the concept of using one facility to help support the overall park system has been done not only in Parks but throughout the agency. If the agency were to be true to revenue sources, a substantial amount would be spent on elk pursued by nonresident hunters. Funds generated from nonresident elk hunters are used to support a number of programs.

As to the legislative concerns, he would not be surprised to see bills be introduced to take away the Commission's authority to regulate fees. He does not agree that public input was not been requested. The Commission went out of their way to have the comment period open for 60 days instead of the normal 30 period.

As to the concept of this going to the Legislature, there is a view that users should pay. This is the mechanism to implement that. The Legislature also is asking for the Parks Program to be more self-supporting and require less dollars from the General Fund.

Mulligan asked for a response to the allegation fees are being raised for maintenance and then shifted into the capital accounts. **Monger** said it is correct in that substantial investments have been made within the capital program over the last ten or twelve years. The operations budget in the Parks Program has been running about \$4.5M per year. That is part maintenance, part management, and part interpretation. During the last twelve years, close to \$33-35M of improvements have been completed in the state parks program. About \$15M has been road improvements using state highway fuel tax dollars to improve county roads leading to state parks and roads within the parks. About half of that capital improvement has been road projects with local governments, not just for state parks users benefit but also for the local citizens.

In the last twelve years from a pure improvement standpoint, a new visitor's center has been put at Makoshika for about \$1.2M and a new facility at Ulm-Pishkun for about \$2M. The other improvements have been mainly maintenance related. The new toilet facility at Whitefish Lake State Park replaced an outdated, rundown one that wasn't handicapped accessible. So while things are being maintained they are also being upgraded and public demands are being met. There are improvements that have been above the maintenance level but much of the capital program has been for working on existing facilities or replacing facilities that were put in during the sixties.

Mulligan: That doesn't totally answer the question. What is confusing for a lay person are the different pots of money and how they can and can't be used. A good example is if you laid off all the planning department and the construction engineers, how much money would be freed up and then how much would go to maintenance. We hear from a lot of people who are tired of having to use the bushes as a restroom at a fishing access site and seeing the messes and want money spent there because of the increased use of these sites. That's the dilemma we are in, we can't charge commercial people for those, we may get to that point, but the use is increasing tremendously and we are getting hammered for not spending the money to provide the facilities and maintenance at these sites. So is there the opportunity to shift these funds around, can we lay people off and shift it into maintenance? I know there's different pots and that's what I'm trying to get to here.

Monger: There is that flexibility. There are about 110 FTE's within the Parks Program, full time equivalents. About 45 to 50 full time people work in Parks. Of those 45, 11 or 12 are in our Helena office and the others are field based. Within the Helena staff there are two people in planner type positions. They are responsible for obtaining \$1.5 M a year in Land & Water Conservation Funds. If they were laid off only about \$75,000 a year would be saved. Concerning engineers, we do have a Design and Construction Unit within the Department; it is not part of the Parks Division. They operate using Department overhead. We could cancel the new toilet facility at Cooney which was requested by the people at Red Lodge Arm. There are 75 campsites there and they didn't want to drive six miles to use a flush toilet. Three quarters of that money is federal money. The money can be used for operations and maintenance and it is in our budget at this time. It is a nice leverage to have, using one-quarter state money to three-quarters federal money to build such a facility because it supports boaters. We're operating pretty lean from a staffing standpoint when you consider the number of seasonal workers. There are about 150 seasonals that do get laid off every year. Elimination of positions means public services and maintenance would be lost.

Walker: Using the example of the Cooney facility, the federal match that we are going to use, could it be used for maintenance if it were not used there, did you just say that? **Monger:** Yes. Effectively. **Walker:** It was my understanding that those federal dollars could only be used for capital and we were advised they couldn't be used for maintenance. **Monger:** Federal motorboat dollars can be used for maintenance and we do use them in our operations budget. I think we get a little over a million dollars a year in boating funds from the feds and we are able to use about \$75,000 of that for operations. The match for the shower building would probably be motorboat fuel tax, state fuel tax monies. We also use that money for maintenance of facilities.

Walker; (addressing former **Rep. Harper**) I found your comments to be of interest. We are accused by pro-parks people that we are a hook and bullet agency, we shouldn't be paying attention to parks. I use the facilities, as probably you and the others in the room do. I'm constantly talking with Department personnel about what I see that I don't like, weeds, garbage, especially in some of our primitives. It's easy to criticize, but what is the answer.

Harper: Basically it's maintenance vs development. In the legislature and in the Fish and Game Committee, many of us were concerned that the first priorities of these areas be maintenance, which includes weed control, sanitation and other things that deal with people being able to safely use the areas, as opposed to development. You drill a well because you're going to put a flush toilet in or put showers in, not only are you probably impacting neighbors wells and agricultural and irrigated operations with wells but you are taking on a whole new set of responsibilities to protect an investment you are making. Now you've got to put electricity in and you've begun a cycle of development that can only be completed by continuing itself. How can outdoor recreating sports people have access, safely use clean facilities without having a financial burden put on them. That's why the distinction between maintenance and development is so critical. If I'm right, there's been a characterization that was mentioned about an agency here. Name-calling has never served to advance any purpose in the Legislature. I know many of the people that work in this agency and they are some of the best, most decent, brightest people I know. I am in no way suggesting that staff cuts be made. What I'm suggesting is that this agency be very careful about taking the lead and saying that outdoor recreation is going to take the lead in raising revenue. I believe in fees for certain areas. I also believe in free access to a number of different areas. I suggest you continue that mix. I'm not saying don't implement any fee increases. They may be appropriate and some shifting in equalization may be appropriate. Maintain your current access sites, add raw access if you can, provide for sanitation and that will answer most of the problems. If these people want plug ins and showers, they should go to private facilities.

Mulligan: This is where it's gray to me. The perception I'm getting from the Department is that part of it (plug-ins and showers) is a fairly minor amount of spending. The big issue is the increase in the use of access sites. I know in southwestern Montana, in my area, it's terrible. We've got a significant problem at a number of our access sites with increased use, the litter, the lack of toilet facilities and even the lack of access sites compared to what the demand for the use is. So we are getting it from one side that you've got to do something about this and from the other side that you shouldn't get the money to do something about this. We don't have all the tools in the bag yet even though the commercial side has stepped up and said, "Yes, we should pay for our impact on our part of the river." We aren't in a position to collect that yet. So here we sit, having to make a decision. Do we continue with the mess that we have, some of which, I believe, is a result of the primitive parks situation where we were somewhat limited in being able to look at putting some money into some of these areas, toilets, things like that, at least the perception of limitations. The River Recreation Advisory group, is going to come out with some comments. I know when the two rivers advisory groups for the Big Hole and Beaverhead met, one of their issues was exactly the same thing, more money, more facilities, more maintenance needs to go into those two rivers. Every time we turn around with a group of citizens like that, that is one of the pieces that come out. So how do we fund it?

Harper: The problem is overcrowding, overuse of existing facilities. Is this proposal to purchase more access sites, more state parks, expand that, I don't see it. Putting in vault toilets, all of that is included in the Primitive Parks Act under maintenance. I was involved in a meeting earlier in which we asked for the documentation of exactly how much was needed. Haven't seen that yet, and don't know what the fees will raise. How do we accommodate more and more people using the areas without expanding the areas. You don't do that by adding development. You don't need flush toilets, you don't need shower houses. What you need is area for people to be able to camp. We want to avoid putting Smith River type regulations on all of our other outdoor camping, hunting and fishing sites. I'm suggesting that you look closely at the distinction between the kind of maintenance that's allowed in the Primitive Parks Act, and development that really does impact neighbors and carries a financial impact that never ends. Put money into things like weed control and upgrading roads.

Lane: I'm not completely comfortable with my understanding of the allocation of our federal funds. You said that Wallop-Breaux money is about \$1M a year? And only about 7½ % of that can go to operations and maintenance. How is that allocated? **Monger:** Of the federal money that comes to the agency, I believe there is a federal mandate that 15% must be spent on boating related facilities. That 15% comes to the Parks Program and used to operate our motorboat access state parks. We also spend some on fishing access sites that provide for boating access. That money can be used to acquire, operate, develop or maintain those facilities. When you factor in all of the federal strings and requirements for how that money can be spent, it's a lot easier to spend it on acquisition and development than it is operations and maintenance. I would guess we are spending \$75,000 of federal money in the operations program. The balance of that is used in the capital program for boat ramp replacement, road improvements, etc.

Walker: I'm pretty close to offering a motion that we postpone this action because of the comments today. Some were questioning what is going on and in my mind not providing answers. I recognize it's easy to ask questions and it's a lot tougher to come up with answers. I find myself appreciating what has been said. Especially in the context of the upcoming Legislature and the idea that if we make great efforts, to make fees commensurate with what's received, that our reward would be that any coal funds or those types of funds would be stripped away. It seems to me that those balances have been in place for years and I would rather not enter into that tit-for-tat game just because of the current budget crisis. The other part of it is, I really don't understand the bottom line of this. I don't understanding where your funding is. I think they're fair questions. So I'm not prepared to cast a vote today.

Monger: When you suggest postponing this, are you thinking postpone this to your December meeting or are you suggesting postpone this to sometime in the indefinite future? **Walker:** Open to that. I wouldn't give you the indefinite future idea. **Monger:** December isn't going to give us any more information relating to the Legislature or the concerns of this being viewed as self-help or as we're out of control. **Walker:** I'm willing to stand up and be counted there but I need to have a better understanding myself and I'm finding that I have my doubts. **Monger:** I think we're prepared to answer what questions you may have specific or otherwise at this time. Additionally we have an obligation to the public from a sales standpoint of our Parks Passports to have this decision made now because of the December sales season. Also I'm not sure what the timeframe would have for outfitters on the Smith River when setting prices. I know the outfitters are out going to shows now and booking clients. As they would be passing any increased fee along to their clients, it is only fair to establish that price now. I think the other thing is what we've heard from **Mr. Raney** and **Mr. Ochenski** is there's not a demonstrated need for the maintenance and operations money and we can move money around and satisfy this situation. The same comments were heard during the State Parks Futures process and that was a year long process. They came to the same conclusion that additional finances are needed to maintain the Parks Program in it's existing format. **Representative Kaufmann** was on that committee is here and can speak to that. We also saw the proposal the Department made to the Legislature during the Special Session of the impact on the general fund reduction. That's not smoke and mirrors, those are real responses that will be needed if that occurs. The proposals that we've made of the reductions necessary if this fee increase doesn't go through, are real.

Walker: As part of the Special Session, one of the reductions offered was in weed spraying, which is a bell ringer for me. I've got to say the shower facility at Cooney is in my district, that can go in favor of weed spraying. That's how I feel about weed spraying and garbage removal. I don't know how the others fee. Maybe this has to wait a month.

Mulligan: I have no doubt that additional funding is needed. I will support that. My concern is where that funding goes. I want some type of line that I can see that it is going to go to and fix the problems on the ground that the public is complaining about and is going to go to support what the newspaper article this morning is asking us to do with the tourism industry. Which is to jump on board with them and invite more people to Montana to help our economy. Some of these things just don't match real well. I run a business and you don't increase your efforts without some corresponding impact to the other side of the picture. So I have no doubt that we need additional funding. But I want to see it, like Dan, go to weeds; I want to see it go to vault toilets,

to maintenance. To get some of the access sites we have in my part of the country usable. We've got some you can't use, they're a mess. I don't want to see them go to increase staffing in Helena, I don't want to see them to go shower facilities, I don't doubt that in cases like Cooney those are possibly justified. I don't buy the fact that we're spending all our money over there at the expense of everything else. But if we're going to increase, I want to see it go to solve the problems like we have with the Madison County Commissioners. I do believe that the Legislature will support and recognize the need for that and not hold it against us. If that's where it goes.

Monger: We continue to talk about fishing access sites and dollars raised. Our revenue estimate, again it's a soft estimate because you don't know what buyer resistance will be but about \$175 – 200,000 of additional revenue would be generated by the fee increase that is in front of you today. The lion's share of that is state parks related. If you look at our entire fishing access, camping fee program, we're generating in the \$30,000 range on camping fees. We're adding seven new sites here and we're adding \$2 a pop for camping there. I'm going to suggest that of the fee proposal in front of you, less that \$10,000 of that is related to the fishing access program. The balance of this fee proposal in front of you is the state parks program. The Smith River is a state park function being operated predominately with state park dollars. Realistically we are not talking about the fishing access program here. Second, the fee increase, the funding that we are talking about in this fee proposal is for nothing new and additional. This is to maintain the status quo of the operations that we currently have. Right now we are spending about \$250,000 a year more for operations than we are making in the state parks program, from tax revenues, earned revenues, and interest revenues. That is with no capital improvements, no capital program, no new facilities. What you will get for this is what you are getting today. Without this fee increase, what you will be getting is a less of an amount of those activities that are going on today. That is less interpretation at the Caverns, less maintenance at facilities.

Mulligan: That is what Dan and I both said what we're confused with and quite frankly when the work is done and comes before us on our request to review the fishing access sites, one of the things I'm going to ask for as part of that, is a complete understanding and review of how these different fishing access sites and state parks fit together. How the pots of money work, how that money is shifted back and forth, how the staffing works. Quite frankly I think there are some problems there. We need to understand that better. Because I'm not sure that there aren't some shortcomings on the fishing access sites as a result of the funding that is going to the state parks. But it might be my ignorance. It is all part and parcel in my mind even though I understand what you are saying with this. It isn't separate. That's why I've asked so many questions about how can you shift the money.

Monger: I understand and I would draw your memory back to the September meeting where we had a specific discussion about our concern of losing general fund and the concern of putting this fee increase up front of the proposal to lose any general fund. This is to maintain status quo in our existing parks program. It is not in anticipation of future losses from the Legislature. If we are spending \$250,000 more than we have and this amounts to \$175,000 of income, we are still \$75,000 short. To meet that budget with no new revenues services will be cut. Our money is in the people.

Director Hagener pointed out the final budget from the Governor's Office is still unknown. The Coal Tax Trust money was taken away during the Special Session and this will probably continue into the future. It is also unknown what other general fund reductions there may.

Dascher: I realize what we are trying to do. I feel uncomfortable in trying to take money from the Smith River, that we are trying to increase there, to support our other parks. You know I'm a strong advocate for our parks. I just think it's one of these unfortunate things, at this point in time with the economy and financial situation of the state, for us to be trying to raise a substantial amount of money off the backs of one group of users to bail out others. I'm with Tim, I hear all the time about fishing access sites and where there's toilet paper all around. The public is demanding facilities and help there to use them. Perhaps we should see if the Legislature would have any help for us to address some of those problems. I realize it probably has a slim chance, but there isn't any money.

Mulligan: If we look at it in December is that still time to get the information out on fee increases or does it have to go out before December? **Monger:** The proposal in front of you now eliminates the early bird passport. That goes on sale December 1. If the concept of eliminating the early bird is approved, we can live with a December decision on the Parks funding. **Mr. Geary,** can you address what a December decision does for your booking clients?

Geary: A December decisions impact on outfitters, doubles the fees. I want to make clear the Smith River outfitters and the people on the Smith are already paying for the Smith. You are already making money off the Smith River.

Monger: To delay the decision until December would also have no impact on outfitter's booking Smith River trips as they have already booked these at a given price. If the Commission decides to keep the early bird, a price has to be set. A decision could be made now to not have an early bird and if the Commission wants to have an early bird later, that could be decided at the December meeting.

Walker asked to schedule a three or four hour meeting prior to the December Commission meeting on the fee proposal for interested parties. Representatives of the Futures Committee would be included. A clear explanation of how dollars are directed, effects of contracted services are subjects to be included.

Murphy asked how much more of a problem would it create to postpone a decision on the fee increase until the end of January.

Lane: What I would like to see come out of this work session we are talking about, is if we have \$1000 and we can go after federal money, how can we allocate that. That is my biggest question, can we put \$4000 toward operations and maintenance or what percentage.

Mulligan: It would be good to know what could be eliminated, in dire straights, as far as capital projects. What would be the impact, how many dollars those are.

ACTION: *Murphy moved to postpone any action regarding this decision until the December meeting. Second by Lane.*

ADDITIONAL ACTION: *Murphy amended his motion to suspend the sale of early bird passports. Second by Lane. Motion and amendment passed.*

A work session will be scheduled before the December meeting for Commissioners, members of the Parks Futures Committee and other interested parties to review Parks Division revenues, expenditures and other items.

9. ROD on the SW Montana Grizzly Bear Management EIS – Final. **Don Childress, Wildlife Division Administration** introduced **Arnie Dood, Endangered Species Biologist.** Dood briefly reviewed past actions and the current standing of the Grizzly Bear EIS. The Record of Decision summarizes the EIS, the comments received and the responses. An executive summary has been prepared and the EIS has been finalized. The final EIS has to be published and put out for public comment for 30 days after which time the Director can approve it.

ACTION: *Mulligan moved approval of the Grizzly Bear Management Plan. Second by Dascher.*

Mulligan asked that the Commission approval of the document have enough strength so there is not doubt that the statutory requirements that require the Commission to set policy have been met. He noted a lot of time and effort had gone into the plan and would not like to see it languish and FWP not meet its commitments in the plan. All action items listed in the plan should be well reviewed by the Department. There should be direction and plans on how these items will be implemented. The amount of dependence on the federal land managers is of concern, specifically the Forest Service in habitat monitoring and incorporating the requirements of this plan into their land management plan. So far the Forest Service has not lived up to commitments they have made.

He mainly wants to put emphasis on what this plan means to the Department in terms of work and responsibilities. He asked to have the chart on Page 15 expanded as to what FWP is to do, when the item is to be done and what kind of resources and how it will be accomplished. **Dood** said parts of the plan are presently being implemented, others will be implemented in the near future and others to be implemented at a later date depending on funding. There could be some parts that may never be implemented for a variety of reasons. There is a burden on state and federal agencies to cooperate and work together. If delisting does occur, there is a requirement for the USFWS to work with the states for a minimum of five years and possibly longer.

Murphy noted hunters will be contributing this program, so it should be firm that grizzly bears will be hunted. In the chart it only indicates “possibly” for hunting. **Dood** said in the overall text regulated hunting as part of the program is referenced. Hunting is a valuable and pivotal part to the long-term success of the program. FWP thought to have the bears delisted and then open a season immediately, would cast the Department in a negative light. There has to be an adjustment in the public mind to accept regulated hunting as part of the program. **Murphy** said it is his expectation that there will be hunting so the Department should be upfront that this will be part of the plan. **Dood** replied to do that would lead to many more questions such as when the season would be, where bears could be hunted, etc. than there are answers at this time. The plan is clear that regulated hunting is FWP’s intent and the reasons for hunting are laid out in the plan.

Walker suggested instead of using the word “possibly” it might be better to say “future date unknown.” **Mulligan** suggested, “when and where appropriate.” **Dood** will make the change.

***ADDITIONAL ACTION:** Motion passed.*

Mulligan complimented **Arnie Dood, Kurt Alt, Chris Smith** and all others for the time and efforts put forth in developing this plan. He noted it was an outstanding job and Montana is clearly the leader through this process.

Chris Smith, Chief of Operations noted **Commissioner Mulligan** deserved recognition for his part and efforts in this process.

10. Beckman Estate Donation of Green Property R4 – Final. **Childress** introduced **Graham Taylor, Region Four Wildlife Manager** to the Commission. **Taylor** said public involvement and comment on this land proposal had been implemented this past summer. County commissioners and adjacent landowners were contacted and comments were all in favor of this land donation.

Lane noted it was becoming necessary to be more aware of operations and maintenance costs of properties but the addition of this property should not increase the costs of management of this wildlife area.

***ACTION:** Lane moved the Commission accept the donation of the Karen Green property from the Beckman Estate. Second by Murphy. Motion passed.*

11. Update on Wolf EIS – Information. **Glenn Erickson, Wildlife Division Management Bureau Chief**, briefed Commissioners as to where in the process of developing a Wolf Management Plan FWP is and the tentative schedule for the next few months. The draft EIS should be completed by the end of the month and it is hoped to be able to discuss this document at the December Commission meeting. The 60 day comment period should be started by the end of December with public meetings beginning the last week of January. A final briefing to the Commission should be in May.

Walker had anticipated having information sooner than June 1 and wondered if anything in the next sixty days could be eliminated? **Erickson** said he did not believe there was. If there is a way to cut some time it will be done. **Mulligan** asked if the public comment period of 60 days was required. **Erickson** said 45 days was required but a commitment had previously been made for 60 days. He later corrected that statement saying 30 days was required but must be extended an additional 30 days if requested.

Walker asked that reducing the comment period from 67 days to give FWP more than three weeks for a response be given consideration. **Erickson** agreed this would be good. The commitment had been made to allow 60 days for comments during the previous meetings. **Walker** noted the time could be shortened by a week and still would give FWP additional time for their response. **Erickson** agreed and will give this consideration. The five alternative plans for wolves were briefly reviewed; the plan from the Wolf Advisory Council, a no action plan, a modified Council plan, a minimum wolf population and a fifth alternative came from public comments received as to what Montana would do if the delisting process gets delayed or if the other states don't move forward with their management plans. Basically it is to take over wolf management with FWP's plan while the wolf is still delisted but under ESA guidance and the FWS.

Dascher asked what had been done on the funding issue. **Erickson** said each alternative had a budget. In situations where hunting and trapping of wolves are a part of the program more state license dollars are involved. Where hunting and trapping are not allowed, the money is mainly federal funding and possibly private donations and in some instances sharing with license dollars because of the benefit to hunters from the prey side. **Dascher** noted the Council had concerns regarding the livestock compensation. They had been hesitant to move forward with the plan if funding was not available for compensation. **Erickson** said this is addressed in the Council Alternative and is also addressed in other alternatives.

The plan will be sent to Commissioners the end of December. A briefing of the plan will be sent to them before that time.

Walker asked to have a conference call scheduled to update the Commission on the plan before it is sent out to the public would be acceptable. Commissioners will be given any printed information before the call.

12. Update on Sage Grouse – Information. **John McCarthy, Special Projects Coordinator**, briefed Commissioners on six petitions to list the sage grouse as threatened or endangered. Two of the six affect Montana. One is a range wide petition to list every grouse and the other is for the eastern subspecies which covers the eastern part of the US and Montana. Montana and other western states are working on a range wide assessment of populations and habitat. This information would have strong influence on whether the birds would be listed or not. The conservation plan is being finalized and will be released to the public for a 60-day comment period. Public meetings will also be held. The meeting schedule will be furnished to Commissioners. Commitments have been received from the Bureau of Land Management and the Forest Service to incorporate the plan into any future MEPA process they do.

Walker asked who is coordinating the interstate assessment plan. **McCarthy** replied this is an interstate group sanctioned by the Western Association. Three people will be hired to do the assessment. It will involve information from all states, federal agencies.

13. Update on Elk Season Proposals – Information. **Erickson** told Commissioners the regulations meeting were held on Wednesday, November 13. There had not been an opportunity to discuss the proposals with other divisions or the Director. Most changes are minor. The Commission had requested Region One personnel develop a proposal for disabled hunters which was done for the lower Clark Fork Valley. In HD 321 unlimited archery permits are being considered for the south half of the district to reduce hunter congestion and related problems. In Region Six proposes creating an open elk season for either sex. A three-day youth elk hunt in HD621 & HD622 for antlerless elk for 20 youth hunters has been proposed. The CMR is considering a nonambulatory/handicapped accessible hunting area in a portion of HD621 which would not be a part of FWP regulations. No changes are proposed for Region Seven.

Currently there is a closed area in the Gallatin. Information on removing this closed area would be provided to the public for input. There is the option for limited hunts in the area but no decisions have been made on whether to pursue a change in legal status.

The draft EA for the elk plan should be ready for public comment by the end of February. The final EA and ROD Notice will be brought back to the Commission around the 18th or 19th of April. It is hoped to have a final decision by the end of April for the next season setting process.

Walker asked Wildlife personnel look where additional harvest is needed. If possible expand the antlerless opportunity at the end of the season into more areas. **Walker** would like nonresident youth be provided with the same opportunity to hunt in Montana as is given to resident youth. Nonresident youth would be allowed to hunt for the same cost as resident youth. This license would be for deer and elk only. **Walker** would not be against expanding this license to include birds.

14. Delete Special Regulations for Metcalf Lake – Tentative. **Chris Hunter, Fisheries Division Administrator**, told Commissioners this lake, which is currently managed as a trophy trout lake, has been listed for sale by the Plum Creek Timber Company. **Jim Vashro, Region One Fisheries Manager**, proposes eliminating the special regulations and reverting to standard regulations for the remainder of the time there is access to the lake so Montana anglers can harvest fish which were planted by FWP.

Walker noted this almost seemed like a punitive action. **Hunter** doesn't believe this is the case. The lake was stocked using angler's dollars and as it is likely the lake will be closed to public access, this is an opportunity for the fishermen to harvest those fish.

Mulligan asked if the proposal had been discussed with Plum Creek personnel and what their response was. **Hunter** said they were all right with the idea. He said it had been agreed not to put an addendum on the regulations but only post the regulations change at the lake. It will not be widely advertised.

ACTION: Murphy moved to proceed with the proposal. Second by Mulligan.

Walker noted the current regulations are April 1 through November 30, what would be the dates for this? **Hunter** replied it would be year around. **Walker** stated he is uncomfortable with this proposal.

ADDITIONAL ACTION: Motion passed, four to one with Chairman Walker in opposition.

15. Beaverhead & Big Hole Rivers Recreation Use Rule Extension – Tentative. **Chris Smith, Chief of Staff** reviewed the past history of the rule for these rivers. In 2001, the Commission adopted biennial rules regulating the use of the Beaverhead and Big Hole Rivers in an attempt to distribute use and address crowding issues. The Department's recommendation is to go ahead and initiate rule making using the existing Beaverhead and Big Hole rules as the proposed rule and allow a public comment period. In February a decision as to the appropriate course of action for the coming season could be made. This would keep the Commission's options open. If it is decided not to initiate rule making, that decision is being made with very limited public input.

Mulligan said letters had been received requesting the Commission consider not putting a date on this rule, leave it open with the wording that it would be readdressed at the time the river recreation group was completed. What are the pros and cons of how this might be favorable from a rule-making standpoint? **Smith** said since the Administrative Procedures Act would be followed, it would be different than a biennial rule as a biennial rule has at most a two-year life. The rule adopted by this process would be permanent unless a sunset date or review clause was put into it. It was thought the Commission intended the existing rule to only be in place while the broader process was initiated.

Mulligan said it is important to him that the rule clearly states the trigger will be the work from the River Recreation Advisory Council rather than a time frame and a commitment be clear that it will be revisited based on input of that group. **Smith** said the proposed rule could be worded to make this intent clear. **Mulligan** is concerned the work from the Council may trigger legislative action. He wants to avoid going through another rule making process in the interim. The objective is to not make this appear or in fact be a permanent rule because the commitment was made that it would not be until the river recreation process was completed.

Walker thinks with the experience with this rule and less than universal acceptance of it, revisiting the issue in two years isn't that much of a problem. It seems reasonable to continue this in two year increments and let it work itself out.

Smith said he wants to make it clear that at this time, all that is being asked of the Commission is if they want to initiate a process that would allow them to make a final decision in February as to whether or not to keep this rule in place for one or two years. This is a place to start the discussion for the next two months.

***ACTION:** Mulligan moved to adopt the Department's recommendation for the proposed rule making process for the Big Hole and Beaverhead Rivers. Second by Murphy.*

Steve Luebeck, Big Hole Watershed Committee. This committee supports the recreation management plan as presently written and urges the Commission reinstate it through the Montana Administrative Procedures Act. They would also encourage the Commission not put an automatic termination date on the plan, recognize on the face of the rule the simultaneous process and recognize the need for consistency between the statewide policy and the Big Hole policy. Should any aspect of the Commission's future decisions be inconsistent with the statewide policy, the Commission would revisit that particular rule but not the entire rule.

Walker asked **Bob Lane, Chief Legal Council** if it is possible to insert a provision such as requested by **Mr. Luebeck**. **Bob Lane** believes they are trying to put something in the rule that would say how the future would be dealt with. Some commitment can be put in if that is what is wanted or it can be made in another manner. There are other options to putting this in the rule.

Larry Copenhaver, Montana Wildlife Federation. This biennial rule has produced positive effects on resident anglers in that area. It is recommended the rule be extended in its present form until the statewide committee develops their recommendations.

Representative Diane Rice, House District 33. **Ms. Rice's** strong objections to the river rules are the economic consequences. This issue has had dire consequences in this district for outfitters and all other business'. She would recommend letting the rule lapse.

Representative Debby Barrett, House District 34. **Ms. Barrett** said other people who do not use the river are affected by the rule. The economy in this area has been damaged by this rule. She could and would support the third option proposed by **Chris Smith** which would be to proceed and initiate MAPA and wait for the statewide committees recommendations.

Robin Cunningham, Fishing Outfitters of Montana Association. The present rules are specific to the Beaverhead and Big Hole Rivers. The rules should be revisited in order to adjust them to changing conditions. It is hoped the Commission will follow the recommendations of the River Recreation Council.

Bob Flynn, Big Hole and Beaverhead Guides and Outfitters Association. His organization and other people in the area would like Commissioners to make a commitment to come to Dillon during the rule making process to visit with the citizens and address their concerns.

Scott Reynolds, George Grant Chapter of Trout Unlimited. This organization would recommend continuing the process through MAPA. The rules generally seem to be working. The recommendation is to extend the rule in some form through MAPA.

Allen Schallenberger, Lewis & Clark Trout Unlimited. There are problems with these rules that have cost people a lot of money. It is hoped the Commission would review the rules carefully.

Mulligan said he stands on the motion as it was made, to send it out for public comment.

ADDITIONAL ACTION: *Walker restated the motion is to go through the MAPA process, the proposal will go to the public and public meetings will be held in the Dillon area as well as other areas.*

Smith told Commissioners if rule making is initiated under MAPA, there is a six month period from the time the proposed rule is published until a final decision needs to be made or the proposed rule is dropped. This would eliminate the need to rush to a decision. If Commissioners want to avoid a break in the rule, the April meeting would be the time to make a decision. It is expected recommendations from the River Recreation Advisory Committee will be available by that time.

Walker stated he is in favor of using MAPA as it would afford the opportunity to see what takes place during the Legislative session. He would hope the two Legislators from the area and Department personnel would work together to accommodate their schedules so they could participate in the public meetings.

Mulligan said this issue is very emotional for people in the area and others. The best and right thing is to get public comment and information and make a decision based on that. He is slightly concerned about the length of time and what impact that will have on users and their planning. If possible, the process should be shortened.

ADDITIONAL ACTION: *Motion passed.*

Walker clarified that Representatives Rice and Bartlett would be contacted when the public meetings are being scheduled in order to give them an opportunity to participate.

16. Bean Lake Ice Fishing Closure – Tentative. **Hunter** told Commissioners this proposal is drought related. The lake levels are low and the Department aerates the lake to try to keep it open and avoid a fish kill. This creates an unsafe situation for anglers. If the final is adopted in December, it would take effect immediately and go through March 31, 2003.

ACTION: *Lane moved to adopt the tentative ice fishing closure for Bean Lake. Second by Dascher. Motion passed.*

17. Stuart Mill Bay – Final. **Mac Long, Region Two Supervisor,** reviewed the history of this land acquisition proposal. There had been some concern of lost tax revenue for the county as a result of the land not being developed for housing. However, the Deer Lodge County Commissioner's have written a letter of support for this project. An ROD was signed on November 4, 2002. The Conservation Fund has provided \$5000 which will cover two years of general operations and maintenance for the access site. Negotiations with the local search and rescue group are underway for maintenance at a reduced cost. This property is considered primitive and FWP's plans are to keep it this way.

Murphy asked if there had been discussions with local citizens as far as volunteers to assist with maintenance of the site. **Long** said there is a good chance the local search and rescue group would be willing to work out a cooperative agreement.

Mulligan noted the Commission is concerned about additional acquisitions because of maintenance and operational costs. However, because of the efforts to bring this land acquisition to conclusion it would be inappropriate to hold up the decision at this time.

ACTION: *Mulligan moved to accept the fee title and management responsibilities for the Stuart Mill Bay acquisition. Second Murphy.*

Ray Tribelhorn, Georgetown Lake Homeowner. **Mr. Tribelhorn** urged the Commission to act favorably to keep this portion of the lake free to public use. The land around the lake is gradually being sold for private building lots. Access for wildlife has also been diminishing. Mr. Tribelhorn said some homeowners might be willing to assist in maintenance of the area.

Walker expressed appreciation for the offer and said he would hope **Mr. Tribelhorn** would carry through with this offer.

Lane asked what would the start up costs be. **Long** estimated approximately \$2500 a year. There would not be any large capital expenditures at this time. **Lane** asked if part of the natural resource damage funds could be set aside for maintenance of this type of site. **Long** replied it was possible but probably not for this project. This project is far enough along that it would be very difficult to add in operation and maintenance costs. For future acquisition proposals, operations and maintenance will be figured into the cost. **Lane** noted that with the budget concerns, he would think FWP would be more cognizant of these costs and if the resources are available, he does not understand why they are not being used. **Long** said operations and maintenance dollars had been requested at one point in this process and it was tied to additional development in the uplands. When development did not occur the proposal came back as acquisition only. **Long** reminded Commissioners this was not an FWP proposal, it was made by private citizens. NRD has been asked to consider in the future, if FWP is to be expected to take on long-term management operations some funds would be required to operate and maintain the areas.

Steve Luebeck. The Department is urged to leave the site in its present primitive state.

Chris Beebe, Montana Wildlife Federation. This organization strongly supports this acquisition. This project is also supported by the Anaconda Sportsmen's Club. He said it is possible the Club may be willing to assist in maintenance of the site.

Scott Reynolds, George Grant Chapter Trout Unlimited. Strong support of the acquisition of Stuart Mill is given by this organization. He suggested the portion of the license dollars for access site maintenance may need to be raised in order to keep the sites properly maintained.

ADDITIONAL ACTION: Motion passed.

18. PEIS Game Bird Farm & Shooting Preserve Programs – Final. **Jim Kropp, Law Enforcement Division Administrator** briefly told Commissioners the background on the Programmatic Environmental Impact Statement and introduced **Tim Feldner, Commercial Wildlife Permitting Manager.**

Feldner told Commissioners this has been a cooperative effort between the Law Enforcement Division, Wildlife Division, the licensees of bird farms and shooting preserves and the general public. The result is a preferred alternative, which FWP considers beneficial to the programs, the licensees and the sportspersons and the wildlife populations. Some alternatives will require change to statute and some will require ARM Rule change. There will be the opportunity for further public input.

Lane asked if the proposed fee increases would cover the administrative costs. **Feldner** said it would bring the gap between what it costs to regulate and what the license fee revenues generated closer. It will probably cover 80-90% of the costs.

Dascher asked if the licensees were supportive of the fee increases. **Feldner** replied they were involved in the process and are generally supportive of the increase. They realize there has not been fee increase since 1963.

Walker said the fees seem unusual as far as the \$20. This seemed to be two different things. **Feldner** clarified that the present fee is \$50 for the first 160 acres and \$20 for each additional 160 acres or part thereof. A \$100 flat fee plus 50 cents per acres for anything over 320 acres is proposed. **Walker** pointed out that typically the fees go down with size and under this proposal the fees increase as a licensee grows. **Feldner** said these proposed fees are in line with neighboring states using the same fee structure. These fee increases will not impact smaller operators as much as larger operators.

Walker asked how the applicant who had developed an area before applying for a shooting preserve license would be dealt with, as the proposal will not allow new shooting preserves in good upland bird habitat with resident wild upland bird populations. **Feldner** replied that if wild birds had moved into the area prior to licensure of the facility, certain mitigation measures would apply. Individuals presently licensed who had improved the upland bird habitat would not be impacted.

***ACTION:** Dascher moved to concur with the Programmatic Environmental Impact Statement for the Game Bird Farm and Shooting Preserve Programs. Second by Lane. Motion passed.*

Dan Ellison, Administration and Finance Division Administrator, informed Commissioners **Nancy Kraft, License Bureau Chief** will be retiring at the end of the year after 32 years of service to Fish, Wildlife and Parks. He then introduced **Hank Worsech** who will be the new License Bureau Chief. **Director Hagener** recognized **Kraft** for her many efforts on behalf of the Department through the years.

19. Nonresident Combination Licenses Annual Rule – Final. **Nancy Kraft, License Bureau Chief** reviewed what has taken place to date on this proposed rule. The rolling average vs the unit average for calculating the targets for the coming season has been the main issue. The proposed rule given to the Commission in September was to use the unit method. This method had been recommended by the License Advisory Council. Based on additional efforts to determine the best method, the Department's recommendation is to use the rolling average.

The Commission has never formally adopted a method for determining the targets. Therefore the Department is recommending the formal adoption of a method and that it be set in Administrative Rule to give future direction and provide consistency.

Walker said there had been a letter from former **Director Graham** dealing with this subject. **Kraft** said it had been in 2000 and the legal counsel advised the rolling method best addressed the intent of the law. **Walker** had asked **Kraft** to review the minutes of last years meeting to determine if formal action had been taken. **Kraft** has reviewed the minutes and the Commission did not take formal action on this rule. Most Commissioners had expressed the thought that the rolling average was the preferred method but no formal action was taken.

***ACTION:** Mulligan moved to follow the Department's recommendation to pursue authority to implement Administrative Rule to define the use the five year rolling average to calculate the target quotas. Second by Dascher.*

Mulligan said he wants to meet the intent of the Legislation.

Bob Lovegrove. Mr. Lovegrove has been a member of the License Advisory Council. He does not agree with the Department's recommendation to use the rolling average. Using the rolling average forces a high number for the year because the numbers have to repeat themselves. The method used to set a target quota has nothing to do with whether or not the licenses are going to oversell. If the concern is going over the limit, gross sales should be used rather than net sales. Using the rolling average method as it is designed would be a mistake.

Jean Johnson, Montana Outfitter and Guides Association. Ms. Johnson said outfitters do not want as many licenses as they can get. The public will only tolerate outfitters getting just so many licenses.

Walker said after hearing **Mr. Lovegrove's** comments he is confused and asked **Kraft** for further clarification. **Kraft** said the Department would agree that a structured rolling average was not used prior to a year ago as there was no direction, no historical information to base a rolling average on. When **Director Graham** gave the direction, that is when they started to think of it in a structured method for estimating for the following year. The first four years, a structured method was not needed until after five years data was accumulated. If it had been done in a structured rolling method, they believe the target numbers would have been different than what they are.

Kraft then asked **Rob Brooks, Responsive Management Unit Coordinator** to better explain how and why they came up with the recommendation to use the rolling method. **Brooks** said in the first four years a structured method was not used. The Council would have recommended different targets and a different price if a structured rolling average had been used from year one. If there is an oversell in the fourth year of the unit method, it would be hard to recover. Difficult decisions as to price and the target would have to be made in order comply with the law. There would be still variations in using either method. He does not believe it would be as significant as indicated by **Mr. Lovegrove**.

Dascher thought there were the first five years and looking at this she does not see any corrections. There is only a very small correction on the rolling. If an actual rolling five year average were taken, doesn't it stay at five, drop one off at the back, add one on at the front and take the average and that's what the price is predicted on and the target licenses left. **Brooks** said this is correct.

Dascher: So we shouldn't get into this situation of a huge oversell on the fifth year. This is the way the line is here, at 2000 and we start the next group of 5 years on a unit or a rolling average. **Brooks** said you would hope not on a fifth year but there are other factors that drive demand for the licenses other than price. In looking back at the historical record, B10's for the first 4 or 5 years the price was set at \$835 and was undersold the first 4 years. If this information were used as the model it would indicate it would be fine to set the price at \$835 the fifth year. The sales would be right there. Obviously price was not the major driving factor. In the fifth year 6200 licenses were sold gross, 5980 net. So there were other market factors beside price.

Dascher: The whole idea behind this was to provide some stability so there would not be peaks and valleys in sales. It looks like in using either method there would be that. **Brooks** said there is this possibility and the data would indicate that in some cases. When in looking at the B11 the first year, for historical record, be aware that even the outfitting industry pointed out there was pent up demand. Outfitters had a large number of clients who had put in a nonrefundable fee to hunt and had not drawn a permit up to that point so the outfitters said they would hold the money and when the client drew a permit that money would go towards the costs of the hunt. When FWP came up with the guaranteed license, the hunters were there and the hope was the price would hold down the number of applicants but obviously it didn't.

Lovegrove: For purposes of clarification, if the rolling average had been used, the first time this could have been used technically was in 2000. The target then would have been 5915 licenses. This enhances what he believes is the fallacy of the rolling method. The unit method allows the experience from the preceding years without locking in to a variation that existed at that point in time because of the mistakes made in estimating price for those licenses.

Mulligan: It is not clear how that locks into a five year unit when what is being heard is that if this were the first year of the new five year unit, there are such market conditions that we need to start over and start way down here. Don't think about the past, everything has changed. So we would not be learning from what was learned in the previous five years under that mind set.

Lovegrove: Right, but unfortunately that is what the rolling average does, it locks you in because obviously you are going drop out 1996 so you end up with these four numbers to start with. As you can see the 5980 is there influencing the next number. The next year you drop out this year but the 5980 is still there influencing your outcome. It's not until that last year that that drops out unless there have been significant differences from these numbers during the next five year period, you are still going to have to meet or use a number similar to that in that last year. That's the limitation to the rolling average method.

Mulligan: What's the problem with it not falling off. If it's included the next year it's recognized as being part of the average?

Lovegrove: Because this is going to hold this collective sum up. You are taking the difference of the sum of these four from this. Because this is high, you are going to be repeating numbers in this range for targets. If you get a number that comes in high again, these numbers in subsequent years before you get here, are going to have to drop even more. So introduces even greater variation into your figures.

Mulligan: I thought that was the intent is if they were high we needed to make a change to get them back down low to stay within that box.

Lovegrove: The unit method allows you to do that but it doesn't require you to do it in the next year. It allows you however many years you have left to do that

Walker: I'm seeing what he's saying. **Mulligan:** I do too but I see advantages both ways. He is saying it will make it more consistent with less variation but I also think it will have the opportunity for a large oversell the last year that blows it out of the water. That we then don't factor that back in and it could keep us in violation of what I think is the intent of the law. There are advantages and disadvantages.

Walker: To the extent that forces us to low numbers for the ensuing four years, then when we do that average on the fifth year it calls for another high number. Now if we could absolutely predict and this were a true economic model like we got in 101, then we would go along with a constant price and then on that fifth year we drop the price to increase sales. I don't think we want to do that. **Mulligan:** Of course the other option is you would drop the high and the low, which is frequently what's done with them.

Walker: That's what my friend here wants to do. He wants to go to an olympic average. **Murphy:** I've been involved in a couple of different activities where an olympic rolling average has been used, where the high and low are thrown out. Maybe in this case you are using the seven years, you throw out the high and the low and you are going to have those five years left for your average and it continues to roll forward. Will that olympic average process be a benefit in providing for the stability we are trying to come up with?

Brooks: This is certainly an option. You take out the high and the low so you are averaging out the very thing you're talking about. To ask a question of the Legal Division, would we be able to consider that in terms of the Legislation as it is written.

Bob Lane: When talking about options, this is the kind that can be considered in terms of a logical way of approaching how these are averaged out. Does this meet the statute? The statute does talk in terms of averaged over a five year period. It doesn't seem to allow for some olympic average.

Murphy: You could use the five years but throw out the top and the bottom and really be averaging on a three-year basis vs the total five in context of that. **Lane:** You could say you are not really doing it over a seven-year period. You drop the high and low and it's the remaining five years. I wouldn't necessarily say that is outside the scope of it because the statute isn't really clear in terms of the method, it just says over a five-year period. Dropping the high and the low seems could make some sense. The intent of the statute is not to sell too many but to try and come close to that set amount so we can get the money for the programs. We are directed to try and do that but they wanted to put a constraint on it. The constraint is that you have to average and take into account the history as you go through this so you can make adjustments. I think anyway that makes adjustments, it does it over a five year period seems to be fair to me. The Legislature doesn't want us to oversell and make more money than we should but it doesn't want us to go under either. It tells us that we have to have a method that aims at self-adjusting in some fashion. They've specified a five-year period.

Walker: It does help because I sense the group that works on our recommendations, probably have been discussing what the number is and then you move to what the price is. I'd like to take that number away. You know what the number target is then you work on trying to give us a recommendation on price is difficult enough because of the variables that you'll do your best to predict. But it's a prediction. If you know with certainty what your target is, it seems to me a lot better than is it unit or is it rolling. I like unit better for these reasons and I like rolling better for these reasons. That's where we need to make a decision.

Mulligan: I would actually feel more comfortable with the rolling average myself. **Walker:** But it does trap you into just what **Bob (Lovegrove)** says. **Mulligan:** No, I'm sorry, the olympic average. Eliminate the rolling average.

Dascher: I have a question on the unit method. What happens if you really oversell the last year, then it is all forgiven and you start out the next time with a clean slate. **Walker:** Just like they did last time but in reality they were 65 out of 27,500, which percentage wise is phenomenal. **Dascher:** That's right, I agree.

Mulligan: We went to the public with the fixed average that's set, didn't we? The numbers based on the unit.

Kraft: We went out with the target and the price, based on the five-year unit.

Dascher: If you went to the rolling, you would change 100 licenses... **Kraft:** It would decrease the B10s and increase the B11 by 200 licenses and our recommendation would be for the price to remain as proposed.

Mulligan: I think the rule making process is going to help clarify this whole thing too. So actually what we are looking at is how should we affect this years license sales on the numbers. I think as we go through that rule making it may clear or refine in our mind our confusion. I'm going to withdraw my motion.

ADDITIONAL ACTION: *Mulligan withdrew his motion. Dascher withdrew her second to the motion.*

Murphy: I'm still on this olympic average because we have used it in other areas where it seems to have worked. As a statistician, **Rob (Brooks)**, with that rolling average if we can get past the legislative concern about the five years vs seven, throwing out the high and low and coming up with five years to average with, would that process provide, statistically more stable result in regard to the outcome. **Brooks:** Without having numbers to see, my first sense is yes. If you take away the high and the low it is a huge difference in how that average is.

Lovegrove: The answer is yes because it eliminates the height and depth of your amplitude of the cycle you have gone through. But it still locks you in to the potential for repetition of the previous cycle. That's the reason I think you need to use the unit method. The other thing that I haven't mentioned, using any average does, it also gets you carrying forward the overages or underages from the preceding period that you are dealing with. So you are also compensating for that in the process of picking your number when you really don't need to and that's one of the reasons that last number is where everything gets solved because you still have to come back to this in that last year. While you are concerned about the oversell in the last year, if you really want to approach that with the intent of the law in mind, what you do is you set, dependent on where you come out after those four years, if you have to, you set that price high enough that you will never sell more than you should and that's the way you handle the market. But that's not good for the outfitters. Our council recommended increasing the B10 license well in advance of 2000 but the Commission didn't accept our recommendation and we ended up with the oversell. What I'm suggesting with the unit method, never loose sight of those first five years but then take the next five years and work your way through them sequentially and then if you have manipulate the price to protect yourself legislatively in that last year, do it and still leave that September 1 window for hitting the target. Once that price is set you cannot shutoff license sales at your target before or by March 15. The public by law is entitled to however many licenses they want to buy.

Mulligan: When we go out for the rule making, can we put two options in it? That's what I would like to see us do and I would like to amend my motion that we give direction to the Department to go out with rule making with the option of a unit average or an olympic average.

ADDITIONAL ACTION: *Mulligan moved to direct the Department to go out with rule making with the option of the unit average or an olympic average. Second by Murphy.*

Dascher: I am worried about the olympic average because it says on a five-year average. So we're doing it on a five year average but we're also doing it over a seven year period and throwing out two of the years.

Mulligan: I'm not so convinced that it is clear to us that we are using the intended five-year period with the rolling or the unit average. Which one was intended there? We may wind up using the five-year rolling average or we may wind up with the unit average. I think it's clear as mud. I guess given the disconnect, what I'm trying to get to is to stay where we were at with what went out for a draft on the number of licenses this year which would call for staying with the unit average this year. With the amount of disconnect we have and difference of opinion on this, I'm not comfortable changing and dropping those numbers down for this year which is what we would wind up doing if we go with a rolling average, direction for the rule making. **Walker:** Well, one down and one up, and it's not percentage wise great. **Mulligan:** I think it might be to the outfitters. **Walker:** And to the 100 who are or aren't. I would agree with doing what you are proposing just to get to some end so we can draw a line on this. Our intention is to find the best methodology to provide stability. That's still where we want to be.

ADDITIONAL ACTION: *Motion passed.*

Walker: Now we can move on to the next subject, the price. It looks like we are undersold for these first two years by 126 licenses. Is that right? On the B10.

Kraft: Using the second year of the block, right we've got 10,874... actually we've received more refunds since then so it may be down. Maybe 20 from this total. The total sales would be 10,778 for 2001 and 2002. We are down 222 licenses. **Walker:** Which would indicate a target of 5600, would it not? **Kraft:** It could be, yes. If you use the five-year unit, the target would be 5604, around there.

Walker: We still need to move forward for this year. On the B11, using the same rationale, what would that number be? **Kraft:** It would be 2306. No, excuse me, we've sold 4583 out of 4600 so we are 17 under. **Walker:** So the target then would be 2300. **Kraft:** Yes.

Walker: Which is kind of a paper exercise because when we agree on the price it is gone anyway. But we are within one or two percent.

Murphy: Based on the 5600, we are actually up now from the 5400, we are up 200 from where we were projected earlier. I have a major concern about revenue associated with Block Management, etc. In my mind I feel like we're still a little high on the price on those tags and I would like to see us bring that down from a \$1050 and I initially was looking at \$1025.

ACTION: *Murphy moved to set the price at \$1025 with a target of 5600 for the B10. The B11 would be left as initially proposed, 2300 at \$775. Second by Lane.*

Jean Johnson, MOGA. **Ms. Johnson** asked to clarify the B10 target would be 5600 and the price would be \$1025. The B11 would be 2300 at \$775. She believes the \$1025 is too high in view of the fact that some nonresident licenses were not sold. The target of 5600 for the B10 is also too high as they were unable to sell 5500 at \$1100. The number of refunds needs to be considered. **Ms. Johnson** proposed the price for the B10 be \$975 and for the B11, \$750.

Dascher asked if the Commission were to go with **Ms. Johnson's** proposal and there was a dramatic oversell, wouldn't outfitters be in a worse position than they are now.

Johnson said outfitters believe internally there was a significant amount of the dramatic oversell that occurred in year five, that was in violation of the rules of who can use the guaranteed licenses. They believe there has been a significant amount of internal correction to that. **Hank Worsch, Executive Director of the Board of Outfitters** would agree. That oversell of 600 licenses is an aberration and she does not believe it will happen again.

Lovegrove said the only protection the Department has from violating the law is to set the price high enough there would not be an oversell. There may be legislative action to eliminate this program when it reaches its sunset date. This would be detrimental to the Block Management Program as it is the primary source of funds for that program. He believes the \$1100 should be the price for the B10 and the B11 price should be higher. He would encourage the Commission to not adjust the target of 5500 that was in the rule.

Mary Ellen Schnurr, MOGA Fish and Game Committee. Outfitters clients are told they have to have the money and application in before March 15 as that is the last day to buy a license. Neither the deer nor the deer-elk combination licenses by March 15. What was left were later sold to nonresidents.

Hagener clarified that with a target of 5600, if on March 15 5500 have been sold FWP will still sell licenses up to the 5600.

***ADDITIONAL ACTION:** Motion passed.*

20. Proposed ARM Rule – Extension of Deadlines – Tentative. **Kraft** told Commissioners this rule would give the Director authority to extend a license deadline when significant events occur that prevent the public from purchasing licenses and meeting deadlines established by the Department. This rule would eliminate the need for emergency conference calls to the Commission requesting permission to extend deadlines.

***ACTION:** Dascher moved to proceed with proposed rule. Second by Murphy. Motion passed.*

21. Proposed ARM Rule – Deer, Elk, Antelope & Swan Bonus Points in 2003 – Tentative. **Kraft** explained this would add these species to the current bonus point program. It had been intended to phase in additional species after 2001 but with the implementation of ALS, in 2002 permission was granted to delay that addition. This proposal will begin the rule making process for next year. This will apply to any first choice by the hunter.

***ACTION:** Mulligan moved to proceed with the proposed rule. Second by Dascher. Motion passed.*

22. ALS Update – Information. **Dan Ellison** gave a brief update of the status of the Automated License System since the October Commission meeting. In October the one million'th transaction took place. The Saturday before the general season opened, over 38,000 licenses were issued through the system. There was a brief outage due to the server being overloaded with data. Additional disk space was added by ITSD which resolved the problem.

The implementation of license sales on the Internet, has been delayed. However, it is believed this portion of the project will be implemented soon after the first of the year.

Mulligan said as a license agent he likes the ALS system, it is efficient. He recommended reviewing the off-line license form. It would be better if there were only two forms to complete instead of different forms for each license type. **Kraft** said some license agents are presently using one form for different types. **Mulligan** asked this information be sent to license agents as present instructions say to use separate forms.

23. River Recreation Advisory Council – Information. **Charlie Sperry, River Recreation Management Specialist,** updated Commissioners on the Council's progress and what accomplishments are planned for the future. The Council has had three meetings. Ground rules have been established. The next step will be to develop recommendations on analysis and decision making framework to use in answering the question of when should FWP take more intensive management steps for managing for river recreation. The Council's final assignment, is to recommend what tools are palatable or equitable to address social conflicts on rivers. When the draft recommendations are ready for the Commission consideration, **Sperry** will recommend holding public meetings in February or March to allow the public to hear the recommendations and then offer comments. **Sperry** would like to have time set aside for the Commission to spend with the advisory council so Commissioners can get a sense of what is being recommended and why it is being recommended.

Walker suggested putting together a presentation for the members of the Legislature on Fish and Game Committees. **Hagener** said it had been considered meeting with these Legislators on issues that had occurred since the last session.

24. State Parks Futures Committee Update – Information. This committee had not adjourned at this time so **Margaret Moddison, Chairman** of the committee was unable to update Commissioners on any decisions or recommendations.

25. Bean Lake Water Rights, Supreme Court Decision – Information. **Bob Lane** summarized the recent Supreme Court Decision. He believes it is good, it is limited in terms of impact and is a decision in dealing with a minor issue in water law. It is significant to the few interest FWP has, primarily on some lakes for the public as it protects them from future uses. **Lane** reviewed the history of water rights and FWP's role in these issues.

Lane does not believe FWP is competing with other interest for the water rights. The only impact of this decision is that they protect the investment FWP has made in these resources against potential future competing uses.

Mulligan asked if this decision changes FWP's standing regarding a development next to a stream or river where there was a request to drill a well, that there is some sense of risk of affecting that water table and instream flow. That there was a new use and filing through a new use on a well that was adjacent. **Lane** clarified that **Mulligan** was asking if this decision gives FWP standing in these instances the Department would not have otherwise. No, FWP already has this standing.

Murphy sees, since he is involved with the Montana Water Resources Association, this decision as a much more significant issue than **Lane**. It completely reverses the entire appropriation process with regard to diversion vs nondiversion and needs. This does result in a much changed environment. Maybe not so much from the standpoint of existing senior rights but from the standpoint of any new permits and changes of use. **Lane's** discussion on the public trust doctrine is on target and **Murphy** is very concerned about this as he believes that is where this court is going. It seems strange when looking at the opinions that were issued by the majority vs the minority in that decision, the divergence between the two is incredible. Basically one part of the court, as a lot in the industry, believe this court rewrote the water law, vs interpret water law. One of the big things with regard to this issue from the standpoint of the sportsmen is the perception is that FWP made this effort and this does have a significant impact on water rights and the future of water rights issues. **Murphy** said he issued a news letter trying to divert some of this idea. His concern as a Fish, Wildlife & Parks Commissioner is this is going to have and already has a significant impact from the standpoint of landowners and how they will perceive the Department and the relationship to other organizations, sportsmen's groups for example, associated with access to fishing, hunting and recreation. From this Commission's standpoint is the primary concern. But it will have some very significant negative impacts.

Lane does not disagree with **Murphy**, people feel this is significant and there is concern about the decision. He does not see how it turns water law around or it impacts future rights. This may need to be discussed further because there are a limited number of rights claimed under the adjudication system. **Lane** has gone through this and they have no impact. As to future consumptive rights, there is not much water left to go around in most places. Not a lot can be done either as an irrigator or in-stream advocate by trying to get new water on most places. Somehow the older more established senior rights will have to be dealt with. He does not believe there is water to be divided up in most of the critical places.

Murphy said he did not believe it would be helpful to debate the issue at this time but would like to discuss it more with **Lane** at another time as it is a significant issue to a lot of people.

Mulligan said it is confusing that landowners are upset with FWP. It was his understanding that the Stockgrowers and Senator Grosfield were amicus partners, or friends of the court on this ruling. I thought the stockgrowers were supporting the Department's position on this case that went in front of the Supreme Court.

Lane said they were in agreement and FWP did not vary from this position even though the court seemed to offer the instream rights without a diversion. FWP declined and said it wanted to keep its commitment. The Department only asked that the issue be decided on diverted rights. Other interests criticized the Department for not having said more and taken the offer.

Murphy said that is the case. The perception, in looking back at the case in 1988, the Department was looking at nondiversionary rights and that is what they were seeking at that time. From a historic perspective, that perception has followed through on this case. That is what is believed. This case went far beyond what was asked from a standpoint of the Department's concerns. One of the issues, there was an opportunity to file for a petition for reconsideration of that decision. That was not done so that leads to concerns about the Department not taking this step. In the news letter, **Murphy** tried to make it clear the Department was looking at five diversionary rights and trying to remove the language. The perception is out there and it will have to be dealt with.

Lane said the Department would accept any further assistance **Murphy** could give to clarify this issue. FWP did not ask for this. FWP had an obligation in 1988 because the Legislature said they were to represent the interests of the public. There was an obligation to carry forward the issues. FWP lost in 1988, this was accepted. When FWP asked the stockgrowers to join FWP, it was thought a commitment had been made that they were coming in on one issue. He is not criticizing the decision and does not think it is a bad decision. He does not believe it has much impact. He thinks it is entirely possible that the Supreme Court in 1988 did not want to approve these rights where there is no diversion. The problem they may have had is how this could be done without endangering stock watering rights that don't have a diversion. How in principal can you say a diversion is a requirement in law and apply it only to instream rights and not apply it to stock watering?

Steve Pilcher, Executive Vice President of the Montana Stockgrowers Association. **Mr. Pilcher** said they had been in agreement that the issue before the courts was whether or not a diversion was necessary in order to have a water right. That did not change. He isn't sure if it was necessary for FWP to appeal the 1988 decision. The Legislature has attempted to address legitimate needs for instream flow, for fisheries and recreational uses. He does not agree this decision does not have any impact. Why aren't the claims withdrawn if they are insignificant? He also disagrees that the benefits to the livestock industry far outweigh the adverse impact and the disadvantages because of the stock water issue. He believes this will drive a wedge between those that have forged some common ground in the past and landowners and irrigators will be more apprehensive and turn back some of the progress that has been made.

Meeting adjourned at 5:45p.m.

Dan Walker, Chairman

M. Jeff Hagener, Director